

1 **MAKAREM & ASSOCIATES APLC**
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10 **UNITED STATES BANKRUPTCY COURT**

11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

12 *In re* JAMES FLOYD CANNON and
13 JAMIE DARLENE CANNON,

14 Debtors.

15 Case No.: 15-bk-11835
16 DC No.: RWM-1
17 Chapter 7

18 Hon. Fredrick E. Clement

19 **DECLARATION OF RONALD MAKAREM
20 IN SUPPORT OF DEBTOR'S
21 APPLICATION TO REOPEN CASE**

22 **Ex Parte Hearing**

23 Date: *not set*

24 Time: *not set*

25 Place: *not set*

MAKAREM DECLARATION

I, Ronald Makarem, declare and state as follows:

1. I am an attorney duly licensed to practice law in all of the courts of the State of California and in the United States District Court for the Eastern District of California. I am an attorney at Makarem & Associates APLC, which represents Debtor in state-court litigation and in this Court for the limited purpose set forth below. I have personal knowledge of each of the facts set forth herein, except where indicated otherwise. If called upon to do so, I could and would testify competently thereto.

2. I represent Debtor James Cannon in connection with legal malpractice claims alleged against his former Chapter 13 and Chapter 7 bankruptcy counsel, Robert Williams. I do not practice bankruptcy law and do not represent Mr. Cannon in connection with his bankruptcy. Due to my experience in the legal malpractice field, however, I am aware of the federal common law *Barton* doctrine, which in certain circumstances deprives a state court from exercising jurisdiction over a lawsuit that potentially affects the administration of a bankruptcy estate. If the *Barton* doctrine applies, leave of the bankruptcy court is required in order to litigate a matter in state court.

3. Based on my firm's research and my discussions with other legal malpractice practitioners, it is my understanding that the *Barton* doctrine potentially applies after the bankruptcy case has been closed in lawsuits against a trustee, court-approved counsel, or debtor-in-possession's counsel. To date, I have not located any precedential Ninth Circuit opinion, or published district court decision within the Ninth Circuit, that addresses whether the *Barton* doctrine applies in a lawsuit brought against a debtor's former Chapter 13 attorney.

4. On January 11, 2018, I filed a legal malpractice complaint against Mr. Williams in state court on behalf of Mr. Cannon. If the state court dismisses the case for lack of subject matter jurisdiction pursuant to the *Barton* doctrine, the statute of limitations may bar Mr. Cannon from refiling in the Eastern District bankruptcy court. Due to the

1 uncertainty of the *Barton* doctrine, and the irreparable harm to Mr. Cannon should his
2 claims become time barred, I previously filed a federal complaint prior to the instant
3 application to reopen the bankruptcy case. Soon thereafter, I will file a motion seeking a
4 determination of whether the *Barton* doctrine applies, and if so the Court's leave to proceed
5 with the state court litigation.

6 5. I am mindful of the Court's busy docket and would not have filed the instant
7 application and the complaint if I did not believe it was necessary to protect the interests of
8 my client.

10 I declare under penalty of perjury under the laws of the United States of America
11 that the forgoing is true and correct.

Dated: January 16, 2018

MAKAREM & ASSOCIATES, APLC

By: /s/ Ronald W. Makarem
Ronald W. Makarem
Attorneys for Debtor JAMES CANNON